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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,410	02/14/2002	Stephen G. Dick	I-2-142.3US	8149
24374	7590	06/21/2004	EXAMINER	
VOLPE AND KOENIG, P.C. DEPT. ICC UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			JONES, PRENELL P	
			ART UNIT	PAPER NUMBER
			2667	

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/075,410

Applicant(s)

DICK ET AL.

Examiner

Prenell P Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,6,9 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1 and 9 is/are rejected.
- 7) ☒ Claim(s) 6 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Arguments***

1. Applicant's arguments with respect to claims 1, 6, 9 and 14 have been considered but are moot in view of the new ground(s) of rejection.

***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 6, 9 and 16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5 and 7 of copending Application No. 09/575,796. Although the conflicting claims are not identical, they

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are not patentably distinct from each other because the limitations of the present application are encompassed in claims 1, 2, 5 and 7 of US application 10/075,410.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crayford in view of Parsa (US Pat. 6,643,318) et al.

Regarding claims 1 and 9, Crayford (Abstract) discloses a communication system that includes Ethernet switching which provides efficient flow control wherein the architecture includes flow control indicators, (col. 2, line 16-29, col. 3, line 20-41, col. 7, line 33 thru col. 8, line 10)

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preamble sequence, a special preamble evoking collision on transmit packet, plurality of code groups with associated identifiers/indicators, plurality of various devices communicating, multiple collision domains received, (col. 9, line 13-35) packets of one collision domain is transmitted to another collision domain conforms to IEEE 802.3 standard, (col. 10, line 30-49) the switch/receiver creates a logical collision by combining collision domains, plurality of code groups, (col. 12, line 39-58) logical collision is selected using a select code for communicating. Crayford is silent on selecting a preamble from group of preambles. In analogous art, Parsa (US Pat. 6,643,318) discloses (Abstract, Fig. 1, 4, col. 4, line 30 thru col. 6, line 67, col. 9, line 10-41, col. 11, line 7-60) a CDMA system for resolving collision in a packet based communication system wherein the communication is between base station and mobiles, assigning channel resources, set of predefined signatures, CPCH uses defined channelization/scrambling codes, and a series of access preambles wherein each contains a signature corresponding to a selected channel, selected signature/preamble. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to be motivated to implement a selected preamble from a set of preambles and multiple predetermined set of codes associated with CPCH as taught by both Parsa (US 6,643,318) with the teachings of Crayford for the purpose of further managing and minimizing collisions associated with a CDMA communication system.

***Allowable Subject Matter***

1. Claims 6 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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2. The following is a statement of reasons for the indication of allowable subject matter: Although, the prior art a CDMA system which includes communication between a base station and at least one of many mobiles selected by base station, plurality services (access opportunities) are provided using common packet channel (CPCH), spreading codes used to transmit information, predetermined bit/code sequence, acknowledgement contains access preamble (AP) which contains identification, base station acknowledges one access attempt per time-slot, access is associated with slots and signatures, a CDMA system for resolving collision in a packet based communication system wherein the communication is between base station and mobiles, assigning channel resources, set of predefined signatures, CPCH uses defined channelization/scrambling codes, bandwidth management and acknowledgment mechanism, acknowledgment used by base station wherein frames/packets are identified by predetermined specific numbers, multiple access (access opportunities), set of codes, they fail to teach/suggest channel indicator distinguishing between codes using an inversion.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prenell P. Jones whose telephone number is 703-305-0630. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 703-305-4378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Prenell P. Jones

June 10, 2004



CHI PHAM  
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